

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re WALTER SANDERS, III, Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

WALTER SANDERS, III,

Respondent-Appellee.

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UNPUBLISHED

June 28, 2005

No. 252773

Muskegon Circuit Court

LC No. 03-031804-DJ

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Petitioner appeals as of right the trial court's order dismissing this case with prejudice. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner charged respondent (DOB 1-28-86) with armed robbery, MCL 750.529, and designated him for trial as an adult. At the preliminary examination the manager of a gas station testified that he barricaded himself and his cashier in his office and inserted a videotape into the surveillance system. The manager identified respondent as the person who accompanied an armed perpetrator into the station.

Respondent sought discovery of the videotape the manager placed in the surveillance system. On the morning of trial, petitioner advised the trial court that the videotape could not be located. The trial court directed petitioner to turn over all requested discovery material to respondent within thirty days, and entered an order adjourning the proceedings for the reason that respondent had not been provided with requested discovery information.

Respondent moved to dismiss the case, arguing that petitioner failed to comply with the trial court's discovery order, and that the videotape constituted exculpatory evidence. The trial court granted the motion, concluding that the failure to secure the videotape was grossly negligent, and that a jury was entitled to determine whether the videotape was exculpatory.

We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

The failure to preserve evidence that may have been exculpatory does not constitute a denial of due process unless bad faith on the part of the police is shown. *Arizona v Youngblood*, 488 US 51, 57; 109 S Ct 333; 102 L Ed 2d 281 (1988).

We reverse the trial court's order dismissing the case. An informal discovery agreement is to be given the same effect as a discovery order. *People v Taylor*, 159 Mich App 468, 475-476; 406 NW2d 859 (1987). The trial court found that the failure to preserve the videotape was grossly negligent, but did not find that the police acted in bad faith. Respondent's assertion that the videotape could have exonerated him was entirely speculative. We conclude that because at most the videotape had speculative exculpatory value, and because the trial court did not find that the police acted in bad faith, the failure to preserve and turn over the videotape did not constitute a denial of due process. *People v Leigh*, 182 Mich App 96, 98; 451 NW2d 512 (1989). Furthermore, the station manager's identification of respondent as the person who accompanied the armed perpetrator was not dependent on the videotape. Respondent failed to show that he was prejudiced by petitioner's failure to turn over the videotape. Dismissal was not warranted under the circumstances, *Taylor, supra* at 487-488, and the trial court abused its discretion by dismissing the case.

Reversed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello